IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1096 of 1990

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF D S KHATRI- KHATRI SAFURANBAI

Versus

KHATRI HAJARABAI JUMA

Appearance:

MR MB GANDHI for Petitioners

MR YS MANKAD for Respondent No. 1

MR CC KAMDAR for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/09/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants-tenants who were sued by the respondents-plaintiffs-landlords for a decree of eviction under the said Act.

2. The plaintiffs-landlords sued for a decree of eviction against the defendants-tenants on the ground that they were in arrears of rent for more than six months and were not ready and willing to pay the rent, that the tenants had made a permanent structure upon the rented premises without the written consent of the landlords, and that the defendants were also liable to be evicted on the ground that they had disclaimed the title of the plaintiffs-landlords.

3. After considering the pleadings of the parties the trial court raised the appropriate issues and ultimately on an appreciation of the evidence on record it dismissed the suit of the landlords. The trial court found that the question of arrears of rent, making a permanent construction and the question of disclaimer of title are redundant and confer no ground for eviction under the provisions of the Bombay Rent Act, in view of the specific finding that the defendant was a mortgagor of the property in question, and although rent note was executed on the same day as the execution of the mortgage deed, once the mortgage was redeemed, the rent note ceased to govern the relationship between the parties and therefore no cause of action accrued to the plaintiffs under the provisions of the Bombay Rent Act.

4. The landlords, therefore, preferred an appeal before the lower appellate court under section 29(1) of the Bombay Rent Act.

5. It may be noted here that the plaintiffs-landlords did not press in appeal the ground as to the tenant having made a permanent construction upon the property, nor did they press the question of disclaimer of title on the part of the defendants-tenants.

6. What was effectively contested by both sides in the appeal was the question of the discharge of mortgage, the validity of the alleged redemption, and the question whether the rent note between the parties would become redundant or ineffective on the redemption of the mortgage. The consequential aspect which was also urged in appeal was the question of arrears of rent on the part of the defendant-tenant, on the basis that the mortgage was not redeemed and the relationship of landlord and tenant continued to exist between the parties.

7. The lower appellate court, after a total reappreciation of the evidence on record, concluded and found that although there was a mortgage executed by the

defendants in favour of the plaintiff, there was no valid discharge of the same and that therefore the rent note which created a relationship of landlord and tenant between them continued to have effect in law. Once it was found that the defendants had not validly redeemed the mortgage and continued to hold the status of tenants on account of the rent note, on facts it was found that they were in arrears of rent for more than six months and were not ready and willing to pay the rent and were, therefore, liable to be evicted. It was on this basis that the lower appellate court allowed the appeal of the landlords and passed a decree of eviction against the defendants-tenants.

8. It is under such circumstances that the tenants have preferred the present revision under section 29(2) of the Bombay Rent Act.

9. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

10. Only a few salient features require to be noted. The lower appellate court has, after a total appreciation of the evidence on record, come to the conclusion that the alleged discharge of the mortgage is sought to be proved by the defendants through the endorsement made on the mortgage deed by Jilubai, the sister of the landlord. There is no controversy that Jilubai had in fact purported to have discharged the mortgage by receiving the redemption amount and having made the endorsement at the foot of the mortgage deed. However, what is relevant and pertinent in law is whether the said Jilubai had the capacity to give a valid discharge in respect of the

mortgage.

11. There is no serious controversy and there is also substantial material on record to indicate that Jilubai and her sister Hajarabai (plaintiff no.1) had an on-going dispute as to various family properties, including the property in question. Ultimately on the appreciation of the evidence on record, the lower appellate court came to the conclusion that Jilubai had no interest in the suit property although she may have had some interest in the aggregate of the properties left to them by their father. At best even if Jilubai had some interest in the property, it was at best only an undivided interest i.e. part interest in the suit property. Admittedly on the date of the dispute the property in question had not been partitioned by metes and bounds and therefore Jilubai had no legal capacity to give effective and legal discharge in respect of the mortgage property, wherein she had at best only a share. The consequential finding or the finding in different terms, was to the effect that one of the co-owners cannot in law give an effective discharge of a mortgage.

11.1 So far as the aforesaid findings are concerned, the same are based on a clear and unambiguous position in law. Once it is accepted that one co-owner cannot give an effective discharge on behalf of all the co-owners (in the absence of specific authority), the defendant would be required to establish, in order to succeed in this contention, that Jilubai had such legal capacity to effectively give a valid discharge, only by establishing that Jilubai held absolute title in the suit property. This factual aspect has not been proved by the defendants. Having regard to the totality of the evidentiary material on record, it would also appear that no serious attempt has been made by the defendants to establish that Jilubai was the sole and absolute owner of the property in question. Even assuming that such attempt has been made, the evidentiary material on record does not bring about this conclusion.

12. These conclusions drawn by the lower appellate court, even on a reappreciation of the evidence, in my opinion are eminently sustainable and do not justify any interference. Even if this court were to enter into the exercise of reappreciation of evidence, merely in order to satisfy the conscience of the court, learned counsel for the petitioners-tenants has not been able to show how Jilubai had full title or absolute interest in the property i.e. that she was the owner thereof.

13. This situation, therefore, establishes that the defendants were tenants of the suit property inasmuch as in the absence of discharge of the mortgage, the rent note continued to govern the relationship between the parties as landlord and tenant. Thus, the defendants-tenants, in order to avoid a decree for eviction, would be required to prove by appropriate evidence, that they have discharged their obligations as tenants and have paid or deposited the rent due.

14. On the one hand it is sought to be contended that the defendants had sent money orders which were refused by the landlords and therefore it must be found that the tenants were ready and willing to pay the rent. However, this contention could not be substantiated from the evidentiary material on record. No money order receipts (issued at the stage of acceptance for transmission of the money order) or money order receipts signed by the addressee have been produced on record, let alone proved by the rules of evidence.

14.1 At this stage it is required to be noted that looking to the nature of the controversy between the parties it was the defendant's case that since the mortgage was discharged, he was the owner of the property and not the tenant. Thus, effectively the case of the defendant was that he was not bound to pay any rent at all.

14.2 As aforesaid, the contention that money order was sent and refused by the landlord is not substantiated by any evidentiary material on record. Even otherwise, when the defendants received the suit notice at Exh.40 and replied thereto by their reply at Exh.41, it is found that the stand taken by the defendants in their reply, is entirely to the effect that on discharge of the mortgage they were the owners and that therefore there is no obligation to pay any rent whatsoever. What is significant is that in the said reply the defendants make no reference whatsoever to any money orders sent by them and refused by the landlords.

15. Furthermore, even the written statement of the defendants filed five or six months after the reply to suit notice, makes no mention whatsoever of any money orders having been sent by the defendants or having been refused by the plaintiffs. Thus, the entire basis of the contention as to the defendants having sent money orders in discharge of their obligations as tenants, is a contention without any basis whatsoever.

16. It is, however, sought to be contended on behalf of the tenants that admittedly there was an on-going dispute as to various family properties between the first plaintiff and her sister Jilubai. This dispute between the sisters pertained to a number of properties which also included the suit property. It is also pertinent to note incidentally that these defendants were also tenants in respect of other properties which were also the subject matter of dispute between the two sisters. The defendants, therefore, thought it appropriate and in their interest to file an inter-pleader suit, which they did. In the said inter-pleader suit, the present defendants deposited a sum of Rs.320/- on 22nd August 1978. The pursis making the deposit is at Exh.51 in the present suit. It is pertinent to note that this deposit comes after the reply of the defendants to the present suit notice, and before the present suit was filed.

16.1 It was on the basis of this deposit of Rs.320/- that the defendants contended that they have satisfied their obligations as tenants to the plaintiffs-landlords in terms of the monetary claim of rent as also established their readiness and willingness to pay.

16.2 However,this contention cannot be accepted for many reasons. Firstly, the suit notice (Exh.40) is obviously by a landlord issued to his tenant, making a specific claim of Rs.94.50ps in respect of the arrears of rent due and payable. If as the tenants suggest, this deposit in the inter-pleader suit was to meet their obligations as a tenant, there was no necessity for depositing Rs.320/- as against the claim of Rs.94.50 only.

16.3 Furthermore, when the plaint of the inter-pleader's suit (Exh.42) is examined, it is found that it does not pertain to the suit property at all. The inter-pleader's suit specifically refers to and is necessarily confined to the two distinct properties referred to in that plaint, which is not the suit property. Therefore, the deposit made in the inter-pleader's suit cannot possibly be attributed as towards the obligations in respect of the rent due and payable in respect of the suit property.

17. Even otherwise, the deposit is not unconditional, and is made subject to the reservations imposed by the defendants. Furthermore, the said deposit is not unequivocal as to the quantification of the rent and as to the identity of the property. Moreover, although the deposit has been made on 22nd August 1978, which is much

subsequent to the suit notice dated 25th July 1978, the said deposit does not in any manner refer to the demand made in the suit notice at all, neither does it in any manner indicate that the deposit is in response to or intended to satisfy the demand raised in the suit notice. Therefore, this deposit made in the inter-pleader's suit has firstly no relation whatsoever with the present property involved in the suit nor with the obligations of the tenant towards his landlords so far as suit property is concerned.

18. In the premises aforesaid, I find that the judgement and decree passed by the lower appellate court is eminently sustainable and cannot be interfered with in the present revision. This revision is, therefore, dismissed and rule is discharged with costs.

19. At this stage learned counsel for the petitioners-tenants seeks time to vacate the premises. On the facts and circumstances of the case the petitioners are granted time upto 31st December 2000 to vacate the suit premises on condition that each petitioner shall file usual undertaking in this court latest by 16th October 2000. It is clarified that there shall be no extension of time for the purpose of filing the undertaking. On the undertaking being filed the decree shall not be executed till 31st December 2000.

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